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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 92-253

ORIGINAL
FILE

In re Applications of

BAKCOR BROADCASTING, INC., Debtor
c/o DENNIS ELAM, TRUSTEE

File No. BRH-900330VV

For Renewal of License of
Station KLIK(FM), Lubbock, Texas

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

File No. BPED-900629MK

For Construction Permit for a new FM
Station on Channel 229C1, Lubbock, TX

To: Administrative Law Judge Walter C. Miller

REPLY TO OPPOSITION TO MOTION TO ENLARGE ISSUES

Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT"), by its counsel, herewith submits its reply to the OPPOSITION TO MOTION TO ENLARGE ISSUES, filed by Bakcor Broadcasting, Inc., debtor, c/o Dennis Elam, Trustee (Bakcor/Elam). In support whereof, the following is stated:

Elam's Lack of Candor

1. In response to SEMFOT's request for a misrepresentation issue in connection with the settlement agreement which Elam reneged on in this proceeding, Bakcor/Elam argues that "the terms of a settlement agreement involving a Commission authorization is a matter to be decided in a civil forum even when the decision has a direct impact on the rights of applicants before the Commission." (Opposition at para. 2). SEMFOT does not dispute the legal precedent cited by Bakcor/Elam. The mere fact that a party reneges on a settlement agreement is not a basis for enlargement of issues under existing Commission precedent.

Indeed, SEMFOT is
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pursuing its legal remedies regarding the contract in the local courts. However, that is not the point on which SEMFOT based its motion to enlarge issues.

2. The point raised by SEMFOT is not simply that Elam reneged on the agreement. That would be bad enough - but something to be left to the local courts. The point raised by SEMFOT is that Elam never intended to abide by the agreement. Elam negotiated the agreement solely to get SEMFOT to dismiss its application for Midland and not to effectuate a settlement of the Lubbock matter. This is not a matter which requires the expertise of a court with respect to contract law. The issue raised is whether Elam knowingly abused the processes of the Commission - not whether he reneged on the settlement agreement.

3. In response, Bakcor/Elam submits only its lengthy diatribe on "improper forum," etc. Noticeably absent from the opposition is **any denial by Mr. Elam himself**. While Mr. Elam submitted a declaration (attached to Opposition) denying that he has "acted in a manner that would constitute harassment or discrimination," he does not deny the fact that he never intended to abide by the settlement agreement. His silence on this point is deafening. The issues should be enlarged.

4. While Bakcor/Elam also submits arguments to justify Mr. Elam's actions in regard to the contract, even a cursory reading of the contract demonstrates the error of these arguments. Nothing in the contract states that Elam may rescind if the SEMFOT application is not granted within "a reasonable period of time." The contract states: "in the event you are unable to obtain a grant of your construction permit within a reasonable

period of time, you or your assigns may purchase KKIK-FM for the same amount and in accordance with the same terms as otherwise provided by law."

5. The agreement contemplated the fact that SEMFOT might not be able to obtain a grant "within a reasonable period of time." Rather than being a cause for rescission, this was an anticipated condition, giving rise to further rights, i.e. the purchase of the station by SEMFOT or a third party selected by SEMFOT. In fact, Elam sought to rescind the contract before there was any determination that SEMFOT could not obtain a grant within a reasonable period of time.

6. In para. 7 of its Opposition, Bakcor/Elam states that "Paragraph 4 contemplated action on the settlement agreement within a 'reasonable period of time.'" This is itself a misleading characterization of the contract. The contract contemplated the likelihood that the grant would not be forthcoming within a "reasonable period of time" and provided for sale of the station to SEMFOT in such a case. It has been extremely frustrating for SEMFOT to have to deal with the blatant disregard for the terms of the contract that Bakcor/Elam have perpetrated in their pleadings to the court and the Commission. Please somebody read the contract.

7. Bakcor/Elam also seems to make much of the fact that the bankruptcy Judge found that "the claimed erroneous pleadings did not influence or affect the Court's Order of April 23, 1992." (Opposition at para. 10). This is not a finding that the pleadings were not misleading. This is a finding that he was not influenced by the misleading pleadings. It is comforting to know

that Judge's do not allow misleading pleadings to influence their decisions. It is not comforting that Bakcor/Elam has a pattern of submitting such pleadings.

8. Bakcor/Elam's pleading is fraught with a number of other errors which need not be addressed here. An example is the contention in para. 5 regarding SEMFOT's silence on Bakcor/Elam's letter withdrawing the joint request for approval of the settlement agreement. SEMFOT did not comment because SEMFOT had no control over Elam's withdrawal, and SEMFOT certainly could not prosecute a "joint request" without Elam. SEMFOT had no remedy to pursue on that matter. However, SEMFOT's silence on the withdrawal letter and other matters contained in the instant Opposition should not be viewed as acquiescence to those arguments. Rather, they simply have no relation to the issue before the Judge, and there is no point in further burdening the Presiding Judge with comments on these matters.

Discrimination/Harassment Issue

9. On this issue, Bakcor/Elam cites Commission precedent that it "will not review claims of discrimination and harassment in the first instance. (Opposition at para. 15). The Mass Media Bureau takes the same position in its Comments. It is SEMFOT's position that this precedent should be reversed. The issue of sexual harassment has become a hotly debated issue with revelations of sexual harassment by U.S. Senators and the like. It is an issue of great concern to the majority of Americans (women). Assuming that the Presiding Judge is bound by the cited precedent, SEMFOT will raise this argument on appeal to the Commission in the hope that the Commission will reconsider its policy.

Respectfully submitted,

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By _____
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CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing REPLY OPPOSITION TO MOTION TO ENLARGE ISSUES by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 21st day of December, 1992, to the following:

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